

The 5th August, 1985

No. 9/5/84-6 Lab./6456.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s. Haryana Roadways, Rohtak.

BEFORE SHRI B. P. JINDAL, PRESIDING
OFFICER, LABOUR COURT,
ROHTAK.

Reference No. 81 of 1982.

Between

SHRI ASHOK KUMAR, WORKMAN, AND
THE MANAGEMENT OF HARYANA ROAD-
WAYS, ROHTAK.

Shri S. N. Vats, A. R., for the workman.

Shri S. C. Singla, A. R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Ashok Kumar and the management of Haryana Roadways, Rohtak, to this Court, for adjudication,—vide Labour Department Gazette Notification No. ID/RTK/83/81/19144, dated 21st April, 1982 :—

Whether the termination of service of Shri Ashok Kumar, was justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The claim of the workman is that he was employed with the respondent as a Conductor and that his services were illegally terminated on 26th February, 1979 and that the said order was passed in an arbitrary and illegal manner in gross violation of the principles of natural justice. It is further alleged that the charge-sheet issued to him was vague and no copy of the complaint was supplied to him and further he was not given full opportunity of participation in the alleged enquiry conducted against him. He further alleged that the procedure adopted by the Enquiry Officer was illegal, because he did not follow the principles of natural justice, in conducting the enquiry against him.

3. In the reply filed by the respondent, the claim of the workman has been controverted in toto. The preliminary objections taken are that the services of the workman were terminated after holding a regular, proper and fair domestic enquiry and that the management has lost confidence in the workman and further that the reference is bad in law and that the same has not been properly made by the appropriate authority. On merits, it is asserted that the services of the workman were terminated after holding a valid domestic enquiry, in which, the workman was given full opportunity of participation and so termination order based upon the same is legal and valid.

4. In the rejoinder filed by the workman, he has controverted the various pleas taken by the respondent and the parties entered upon the reference on the following issues framed on 7th January, 1983 :—

1. Whether the domestic enquiry conducted by the management is fair and proper?
2. Whether the management has lost confidence in the workman?
3. Whether the reference is bad in law being not properly made by the Government?
4. Whether the termination of services of Shri Ashok Kumar was justified and in order? If not, to what relief is he entitled?
5. My learned predecessor, on the same date, passed an order that issues numbers 1 to 3 shall be tried as preliminary issues. Today the learned Authorised Representative of the parties agreed that this reference can be decided solely on the basis of issue No. 3, which is legal in nature.
6. The learned Authorised Representatives of the parties heard. My findings on issue No. 3 are as below :—

ISSUE NO. 3 :

7. The grouse of the management was that before making a reference of the dispute to this Court, the Labour Commissioner, Haryana, did not give an opportunity of hearing to the management. In that behalf my attention was drawn to the statement of MW-1 Shri Om Parkash, Assistant of the Labour Commissioner, Haryana, Chandigarh. He stated that he was working as Assistant in the office of the Labour Commissioner,

Haryana, Chandigarh, and that the demand notice raised by the workman, dated 25th March, 1981, which was sent for re-conciliation, in which, the management was allowed to put its case and the Labour Officer-cum-Conciliation Officer, submitted his report to the Labour Commissioner, Haryana, Chandigarh, who after going through the same passed an order rejecting the demand of the workman to make a reference to this Court. Again the workman moved an application/appeal dated 27th August, 1981, regarding which, report was called from the management for 21st October, 1981, which was furnished by the management on 4th November, 1981, and the Labour Commissioner, Haryana, Chandigarh, after consideration of the report of the management again rejected the demand of the workman to make a reference,—vide his order, dated 4th December, 1981. He further stated that again an appeal was filed by the workman before the Hon'ble Labour Minister, Haryana,—vide his application dated 28th December, 1981, upon which, comment of the Labour Commissioner, Haryana, Chandigarh, were called by the Minister concerned, which were furnished and, thereafter, this reference was made to this Court for adjudication. He clarified that before making reference to the Court on the appeal filed by the workman with the Hon'ble Labour Minister, no opportunity of hearing was given to the management. There is no evidence in rebuttal on behalf of the workman. So, in view of the law laid down in 1983 Lab. I.C. 223 Escorts Ltd., Faridabad versus Industrial Tribunal, Haryana, Faridabad, this reference is bad in law. Clinching the controversy their Lordships observed in paragraph number 10 of the judgement as under :—

"The rule of audi alteram partem is attracted to the exercise of power a second time under S. 10(1) of the Act whilst referring the matter for adjudication after the same had been rejected earlier. 1979 Lab. I.C. 444 (Raj), Dissented from. (Case law discussed)".

8. Under the circumstances, I have no difficulty in holding that this reference is bad in law and answered accordingly. There is no order as to cost.

Dated: 15th June, 1985.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endorsement No. 21-8-/1118, dated the 27th July, 1985.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.
Dated: 15th June, 1985.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

No. 9/5/84-6 Lab./6499.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the Workman and the Management of M/s. Unike Tools and Components, Parvesh Marg, Railway Road, Faridabad:—

IN THE COURT OF SHRI R. N. SINGAL,
PRESIDING OFFICER, LABOUR COURT,
FARIDABAD.

Reference No. 224 of 1984.

between

SHRI PARDEEP KUMAR, WORKMAN AND
THE RESPONDENT MANAGEMENT OF
UNIK TOOLS AND COMPONENTS, PAR-
VESH MARG, RAILWAY ROAD,
FARIDABAD.

Present :

Shri R. P. Singh, for the workman.
Shri Jagbir Singh Bhadana, for the respon-
dent mgt.

AWARD

This industrial dispute between the workman Shri Pardeep Kumar and the respondent management of M/s. Unik Tools and Components, Parvesh Marg, Faridabad, has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/42/84/27815-20, dated 2nd August, 1984, under section 10(i)(c) of the Industrial Disputes Act, 1947, for adjudication. The terms of the reference are :—

Whether the termination of services of Shri Pardeep Kumar was justified and in order? If not, to what relief is he entitled?

According to the demand notice the workman joined the respondent as turner on 7th April, 1982, and his services were illegally terminated

on 1st November, 1983. He has prayed for reinstatement with full back wages and continuity of service.

This claim of the workman has been contested by the management. It is contended that the workman was appointed on 7th April, 1982, as helper. He left the job of his own accord on 11th October, 1983 by absenting himself from duties. It is further contended that the workman has collected his full and final dues before the Labour Inspector and he has withdrawn his case pending before the Authority under the Payment of Wages Act on 20th September, 1984. Amended written statement has been filed with the permission of this court that the management is registered under the Punjab Shops and Commercial Establishment Act.

The workman has not filed any rejoinder denying that he voluntarily left the job. The claim was contested on following issues :—

1. Whether the workman has settled his dispute after receiving his full and final claim ?
2. Additional Issue:

Whether the respondent is registered under the Punjab Shops and Commercial Establishment Act, 1958 ? If so, its effect ?

3. As per reference ?

I have heard the representative of the parties and gone through the evidence on record. My findings on the issue are as under :—

Issue No. 1:—

The management has relied upon Ex. M-1 which shows that the workman has settled his dispute in his claim application pending before the Authority under the Payment of Wages Act. After receiving Rs. 500/- it has been mentioned that this amount has been received after full and final settlement and no claim whatsoever. This amount was received on 20th September, 1984. Had the workman settled this reference it would also have been mentioned in this receipt. Hence this receipt does not prove that the workman had settled this reference also. This issue, therefore, decided against the management.

2. Additional Issue :—

Reliance is placed on photo copy of form F that the respondent was registered under Shops and Commercial Establishment Act, 1958. This form was submitted on 5th January, 1979 and the establishment was registered upto 31st March, 1979. In the present case, the workman was appointed in 1982. Hence it cannot be said that in

1982 the respondent Establishment was covered under the Shops and Commercial Establishment Act. This issue is, therefore, decided against the management.

Issue No. 3 :—

It has been contended by the management that the workman has left the job of his own. He did not join his duties after 11th October, 1983. The workman has not filed any rejoinder denying this fact, which clearly shows that this claim of the management is not contested by the workman. In his statement as WW-1, the workman has contended that he had proceeded on leave on 11th October, 1983 and he returned on 1st November, 1983, but he was not allowed to join duties. There is no evidence that the workman had proceeded on leave from 11th October, 1983, upto 1st November, 1983. Even if the statement of the workman is accepted to be correct, he should have submitted his demand notice immediately after 1st November, 1983, but this demand notice was served on 29th December, 1983, which shows that the workman kept awaiting such for a long time. Hence this conduct of the workman shows that the workman has left his service of his own accord and his services were never terminated by the management. Legally this reference is bad in law because this dispute whether the workman had left the job of his own accord has not been referred for adjudication to this court. The Government has presumed that the services of the workman were terminated by the management. Hence in view of the law laid down by the Bombay High Court and the Delhi High Court in the following judgement, Sitaram Vishnu Shirodhar and the Administrator, Government of Goa and others, 1985-LJ-Page 480, and M/s. India Tourism Development Corporation, New Delhi v. Delhi Administration, Delhi, and other 1982 LIC 1309, this reference is bad. Hence this reference is decided accordingly.

Dated : 18th July, 1985.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

Endorsement No. 2133, dated 29th July, 1985.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act.

Date: 18th July, 1985.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.